

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.Nos.14368, 17460, 13034 and 15824 of 2001

Madurai Institute of Social Science,
rep. by its Secretary,
Alagar Koil Street,
Madurai - 625 001

... Petitioner in W.P.No.14368/2001 and
4th respt. in 13034 & 15824/2001

M.Devarajan

... Petr. In W.P.Nos.17460 & 13034/2001

vs.

1. The State of Tamil Nadu
rep. by its Secretary to the Government,
Higher Education Department,
Fort St. George,
Chennai 600 009. ... 1st respt. in all W.Ps.
 2. The Director of Collegiate Education,
Chennai 600 006. ... 2nd respt. in all W.Ps.
 3. Joint Director of Collegiate Education,
Madurai 625 001. ... 3rd respt. in all W.Ps.
 4. N.Narayanasamy ... 4th rest. in W.P.No.14368/2001 and
petr. in W.P.No.15824/2001
4. Secretary and Director, सत्यमेव जयते
Madurai Institute of Social Sciences,
Alagerkoil Road, Madurai 625 002.

...4th Respondent in WP.17460/2001

W.P.No.14368 of 2001 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to G.O.(2D) No.112 Higher Education (D1) Department dated 03.07.2001 passed by the first respondent insofar as it relates to the fourth respondent herein and quash the same.

W.P.No.15824 of 2001 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the first respondent in G.O.(2D) No.112 Higher Education dated 03.07.2001 and quash the same, insofar as the direction wherein the Government directed to remit a sum of Rs.1450/- to the Management and to regulate the period of suspension as eligible leave are concerned; and direct the respondents to confer all the consequential benefits to the petitioner.

W.P.No.17460 of 2001 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the fourth respondent in No.Nil, dated 20.08.2001 and quash the same, and direct the respondents to reinstate the petitioner in service, with all consequential benefits.

W.P.No.13034 of 2001 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the first respondent in G.O.(2D) No.112 Higher Education dated 03.07.2001 and quash the same, insofar as the petitioner is concerned, and direct the respondents to reinstate the petitioner in service and confer all the consequential benefits.

For Petr. in W.P.Nos.14368/2001 &
4th respt. in W.P.Nos.13034, 17460 &
15824/2001 : Ms.Rita Chadrasekar,
for M/s.Aiyar & Dolia

For Petr. In W.P.Nos.17460, 13034 &
15824/2001 : Mr.C.Selvaraj, Sr. Counsel
for Mr.S.Mani

For Respts. 1 to 3 in all W.Ps. : Mr.A.Shanmugam,
Government Advocate

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C O M M O N O R D E R

Since the case of the petitioners in all the writ petitions is inter-related, these writ petitions are decided by this common order. For the sake of convenience, the petitioners in these writ petitions shall hereinafter be referred to by their names.

2. The case of the petitioners in all these writ petitions, in nutshell, is, as under :

(i) Madurai Management of Social Science, (hereinafter referred to as 'the College Management') issued a Charge Memo to one N.Narayanasamy stating that on 14.01.1993, he had removed the iron rods and pipes from their premises with the help of one G.Malaisamy, Sanitary Worker working in their Management and sold the same for his personal use and he was called upon to submit his explanation. Pursuant thereto, the Government, by order dated 03.07.2001, passed orders directing the Management to reinstate Narayanasamy into service and to treat the period of suspension as Earned Leave. Aggrieved by the same, the College Management filed W.P.No.14368 of 2001 seeking to set aside the order of the Government.

(ii) It is the case of M.Narayanasamy that he was issued a charge memo on 19.09.1993 stating that on 14.01.1993, he had removed the iron rods and pipes from their premises with the help of one G.Malaisamy, Sanitary Worker working in their Management and sold the same for his personal use. On 02.04.1993, Narayanasamy submitted his explanation to the charge memo, wherein he had stated that he removed the iron rods and pipes with the help of Malaisamy only upon prior permission of the Director of the College Management and that he had tendered a sum of Rs.50/- to the Cashier being the value of the sold iron materials and prayed for dropping of charges against him. Thereafter, the Committee of the College Management initiated disciplinary action against Narayanasamy and recommended imposition of punishment of removal from service. Pursuant thereto, the Government, by G.O. (2D) No.112 Higher Education (D1) Department, dated 03.07.2001, directed Narayanasamy to pay a sum of Rs.1,450/- to the Management and directed the Management to reinstate Narayanasamy into service and treat his period of suspension as Earned Leave. Insofar as the said Government Order relates to the direction issued for payment of Rs.1,450/- to the Management, Narayanasamy preferred a writ petition in W.P.No.15284 of 2001.

(iii) In the case of M.Devarajan, who was working as a Record Clerk in the College Management, he was issued a memo dated 05.03.1993 by the College Management alleging that he had caused embezzlement in settling the bills. It is the case of Devarajan that the said transaction was in no way connected with the Institution. Thereafter, he was issued another show cause notice with regard to other settlements and disciplinary action was taken

against him. In the course of proceedings, the Regional Joint Director, the 3rd respondent herein rejected the termination proposal of Devarajan by his order dated 19.01.1999, against which the Management went on appeal on 28.01.1999 itself. Pending appeal, the Management filed W.P.No.1972 of 2001 and this Court, by order, dated 02.02.2001, directed the Government to review the matter. Without rejecting the review dated 28.01.1999 on the ground of legality, the Government entertained the review and held that Devarajan had misappropriated a sum of Rs.10,880/- and confirmed the order of his removal passed by the Management. Aggrieved by the order of the Government in G.O.(2D) No.112 Higher Education (D1) Department, dated 03.07.2001, Devarajan filed W.P.No.13034 of 2001 seeking to set aside the same. Pending disposal of W.P.No.13034 of 2001, the Management passed an order of termination dated 20.08.2001 of Devarajan retrospectively, from the date of suspension, i.e. 20.04.1993 and seeking to set aside the same, Devarajan has preferred W.P.No.17460 of 2001 before this Court.

3. Mr.C.Selvaraj, learned Senior Counsel, appearing on behalf of Narayanasamy, the petitioner in W.P.No.15824 of 2001, submitted that the removal of rustic old iron materials from the College premises by Narayanasamy upon prior permission from the Director of the Institution would not amount to theft. He contended that in the absence of any order passed by the Director, whether it is appeal or revision, the order of the Government is without jurisdiction and is liable to be set aside. He further contended that the charge imposed on Naryanasamy comes within 'mischief of code of conduct' and therefore, the College Management has no power to initiate any disciplinary action against Narayanasamy and it is liable to be set aside.

4. In the case of Devarajan, the petitioner in W.P.Nos.13034 and 17460 of 2001, Mr.C.Selvaraj, learned Senior Counsel appearing on his behalf, in brief, submitted that though the Enquiry Officer has given a finding that the amounts said to have been misappropriated are not relating to College funds, charges were framed against him, which are wholly without jurisdiction. Learned Senior Counsel further contended that while the Director of Collegiate Education is the appellate authority under Section 37 of the Act, he has returned the appeal filed by the Management on 05.07.1999 erroneously under Section 20 of the Act, directing to file an appeal under proper Section, i.e. under Section 37 of the Act. According to the learned Senior Counsel, in the absence of any order being passed under Section 37 by the Director of Collegiate Education, the appellate authority, the impugned order passed by the Government is without jurisdiction and is liable to be set aside.

5. In support of his contentions, Mr.C.Selvaraj, learned Senior Counsel has placed reliance on the decision of the Supreme Court reported in 2006 (3) CTC 494 in the case of G.M.Tank vs. State of Gujarat and another, wherein it was held as under:

"It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of in the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the Appeal filed by the appellant deserves to be allowed."

6. Ms.Rita Chandrasekar, learned counsel appearing on behalf of the College Management in all these writ petitions, with regard to Narayanasamy contended that the allegation of Narayanasamy that the College Management did not prefer an appeal against the order of the Joint Director of Collegiate Education, Madurai, dated 19.01.1999 is false and that even according to Narayanasamy, the Management had preferred an appeal under Section 37 of the Tamil Nadu Private Colleges Regulation Act, 1993. It was her further contention that once misappropriation is proved, there is no room for showing sympathy and the fact remains clear that Narayanasamy had removed the scrap and iron rods belonging to the College Management without permission and had sold the same for his personal use and even the evidence of the Cashier does not improve his case, inasmuch as the Cashier had deposed that it is his job to give receipt for the amount paid and that he has no right to scrutinize as to the purpose for which the amount is remitted.

7. In the case of Devarajan, learned counsel, Ms.Rita Chandrasekar, contended that, though Devarajan, in his affidavit, has stated that the amount which is said to have been misappropriated is in no way connected with the Institution and it is the personal transaction of the Director, he ought to have

participated in the enquiry. She has further contended that despite being afforded an opportunity to defend himself, he has not participated in the enquiry.

In all, learned counsel appearing for the College Management, contended that the averments of Naryanasamy and Devarajan are baseless and prayed for dismissal of the writ petitions filed by them against the College Management.

8. In support of her contentions, learned counsel, Ms.Rita Chandrasekar, relied on:

(i) the judgment of the Supreme Court reported in 1989 (II) LLJ 57 in the case of Union of India vs. Parma Nanda:

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty, unless it is malafide, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

(ii) another judgment of the Supreme Court reported in (2007) 1 SCC 222 in the case of A.P.SRTC vs. Raghuda Siva Sankar Prasad:

"20. The learned Judges of the High Court have also failed to appreciate that once an employee has lost the confidence of the employer, it would not be safe and in the interest of the Corporation to continue the employee in the service. The punishment, imposed by the management in the facts and circumstances of the case, is not disproportionate and that the punishment of removal from service is just and reasonable and proportionate to the proved misconduct.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment. "

(iii) yet another judgment of the Supreme Court reported in (2006) 1 SCC 118 in the case of U.P.SRTC vs. Mahendra Nath Tiwari and another:

"7. We have no hesitation in coming to the conclusion that the respondent did not deserve the award of back wages to him. In fact, he must consider himself lucky to have been reinstated and that we are not interfering with that reinstatement. When a conductor drives a bus for which he is not authorised, he is endangering the public as well as the property of his employer. This by itself is a serious misconduct justifying dismissal of a conductor. Similarly, the fact that one passenger was found travelling and had not been issued a ticket for that journey, constitutes a grave charge against a conductor who is really in a position of trust as far as the employer Corporation is concerned. He is duty-bound to collect the fare from every passenger on behalf of his employer. Same is the position regarding the unexplained twelve used tickets, found in his possession. That prima facie suggests that there is room to doubt the honesty of the respondent. He did not even try to explain the circumstances in that regard. The charges are such that they show a betrayal of the trust placed on the conductor by the employer and that the employee endangered an asset of the Corporation in addition to endangering the lives of the other users of the road.

8. It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the

quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the regulations or the terms of his employment and had betrayed his employer, in any event, is a grave misconduct justifying a dismissal."

(iv) one more judgment of the Supreme Court reported in 2000 (II) LLJ 1395 in the case of Janatha Bazaar South Kanara Central Co-operative Wholesale Stores Ltd. & others vs. Secretary, Sahakari Nourakara Sangha and Others:

"7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management."

9. I have considered the submissions made by the learned counsel on either side and also the various rulings relied on by them. It is seen that the delinquents, namely, M.Narayanasamy and M.Devarajan are non-teaching staff governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976. They were placed under suspension on 20.04.1993 pending enquiry into the grave charges framed against them. A charge memo had been issued to them on 19.04.1993 stating that they have misappropriated substantial amount of money. A Police complaint is said to have been lodged immediately after the misappropriation came to light. Initially, the delinquents, Naryanasamy and Devarajan have approached the Civil Court on 02.05.1993 by filing two suits in O.S.No.798 of 1993 and O.S.No.802 of 1993 on the file of the District Munsif, Madurai seeking permanent injunction to restrain the Management from holding any enquiry. However, the College Management appears to have given an undertaking on 07.05.1993 that no enquiry would be conducted till the disposal of the application for interim injunction. On 08.07.1993, the applications in I.A.Nos.499 and

501 of 1993 for interim injunction were dismissed. Against the dismissal of these applications, the delinquent employees filed appeals in C.M.A.Nos.39 and 41 of 1993 before the Sub Court, Madurai on 23.07.1993 and those appeals were allowed on 11.08.1993, in and by which the matter was remanded back to the Trial Court for fresh consideration.

10. The College Management appears to have made an application on 19.08.1993 for stay of the order passed by the Sub Court, Madurai. But the Trial Court has directed them to maintain status quo till the disposal of the application. This order of the Trial Court has been taken on revision before this Court in C.R.P.Nos.2662 and 2664 of 1993. This Court, on 13.09.1993, passed an order of interim stay of further proceedings in O.S.Nos.798, 800 and 802 of 1993, subject to the condition that the delinquent employees shall not proceed with the enquiry against the respondents or make any further application in pursuance of the enquiry already conducted till the disposal of these Civil Revision Petitions.

11. From the chronology of events set out above, between 08.07.1993 and 11.08.1993, there was no order passed by any Court which stood in the way of College Management proceeding in the enquiry, although the right to hold such an enquiry, which was the subject matter of the suit was initiated by the delinquent employees. It is also seen that it is the case of the College Management that after the completion of the enquiry, no order of injunction was in force and that it has sought the permission of the competent authority to remove the delinquent employees from service. Therefore, it is evident from the letter written by the Deputy Director of Collegiate Education on 15.10.1993, that the College had sought its approval for imposing penalties upon the delinquent employees. Therefore, the delinquent employees moved before this Court in W.P.Nos.13327 and 13328 of 1994 to hold the College Management from proceeding further and the College Management has filed W.P.No.2993 of 1994 against the delinquent employees. On consideration of all these writ petitions, this Court, passed the following order :

"20. In this case, while it is contended by the petitioners that enquiry could not have been held, in view to the pendency of the legal proceedings, it is the case of the college that the enquiry has in fact been concluded and that the enquiry was held during the period when no order of any court operated against the college with regard to such enquiry. The competent

authority has not addressed itself to this issue. The employer college has been directed to reinstate the employees only on the ground that the period of suspension cannot exceed four months under any circumstance.

21. The order impugned in the writ petition filed by the College is therefore quashed. The subsistence allowance for past period if remained unpaid, shall be paid by the College immediately, and such allowance continue to be paid as on as the employee continue to be kept under suspension. If the competent authority finds that the enquiry has not been held within the prescribed period or that the suspension is not justified the employer College shall be liable to pay full salary to the employee petitions for the period of their unjustified suspension.

W.P.2993/94 filed by the College is allowed and W.Ps.13327 and 13328/1994 are dismissed, subject to the directions as above. W.M.Ps.4846,20179 and 20180 of 1994 do not survive and are dismissed. "

12. After the disposal of the above writ petitions, the College Management had written a letter to the Joint Director of Collegiate Education, Madurai on 02.01.1997 and 10.01.1997 with a request to give prior approval for the proposal of dismissal of the delinquent employees, namely, Narayanasamy and Devarajan along with one Malaichamy. The Management also brought to the notice of the competent authority that the provisions of Section 19 of the Act and Rule 13 would clearly show that the allowance is not limited to the period during which the enquiry is pending. However, the Joint Director of Collegiate Education, Madurai, the competent authority, on consideration of the Letters written by the Management and taking note of all the overall circumstances, passed an order on 12.02.1997, which reads, as under:

(1) The College Committee constituted on 18.04.1993 to make enquiry about the charges framed against the three non-teaching staff of your College, namely Thiruvallargal M.Narayanasamy, M.Devarajan and G.Malaichamy was not constituted properly in accordance with Rule 8 of Tamil Nadu Private Colleges (Regulation) Rules 1976. According to Rule 8(3) (d) a person nominated by the University should be present in the Committee, which was not fulfilled by the College. Further, as per Rule 8(3)(c) of the above Rules, two senior most professors should be present in the

Committee. But the Committee has been formed by the College with Thiru.P.N.Narayanaraja (who is junior in service) in the place of a senior-most Professor. Therefore, the College Committee constituted on 18.04.1993 to make enquiry about the charges framed against the above three non-teaching staff, was not properly constituted in accordance with law and hence the entire proceedings on the enquiry conducted by the above college committee which was not properly constituted in accordance with law, will be null and void. It is, therefore, informed to constitute a College Committee in accordance with law, as per Rule 8 of the Tamil Nadu Private Colleges (Regulation) Rules 1976, and reconduct the enquiry about the charges framed against the above said non-teaching staff, by giving them adequate opportunities to attend the enquiry and submit the findings of the Committee to the Joint Director of Collegiate Education, for necessary approval.

(2) Till such time, I am to request you to pass necessary orders to reinstate the two suspended employees, namely, Thiruvallargal, M.Narayanasamy and M.Devarajan from 20.08.1993 (the statutory period of suspension was over on 19.08.1993), since all the cases filed by the management, and the two suspended employees in the High Court, Madras were disposed of and judgments were delivered, as stated in the above paragraphs of this order and pay full salary from 20.08.1993 (beyond 4 months of suspension), as per the judgment dated 30.08.1995 of High Court, Madras, and according to Section 19(3)(b) of Tamil Nadu Private Colleges (Regulations) Act, 1976.

(3) The Secretary of the College is also requested to follow the above orders scrupulously and take immediate action to pass suitable orders to reinstate the above two suspended employees and pay full salary for the unjustified period of suspension from 20.08.1993, since all the cases which were pending at the High Court, Madras, were disposed of and there is no restriction to carry out the orders of Joint Director of Collegiate Education, Madurai, at this stage."

13. While that being the position, Narayanasamy and Devarajan, the delinquent employees have preferred an appeal against the order of suspension made by the Joint Director of

Collegiate Education, Madurai in Proceedings Rc.No.3334/C2/93 dated 12.02.1997 to the Director of Collegiate Education. The Director of Collegiate Education, after hearing both sides and after examining all documents and records, allowed the appeal filed by Narayanasamy and Devarajan and set aside the order of the Joint Director, dated 12.02.1997 in his Proceedings in Na.Ka.No.38456/G2/93, dated 10.04.1997 with a direction to the College Management to conduct fresh enquiry, after affording due opportunity to the delinquent employees. Challenging the order of the Director dated 10.04.1997, a revision petition was filed before the Government under Section 41 of the Act. The revisional authority, namely, the Government, taking into consideration the facts of the case and the orders of the Director of Collegiate Education, Chennai and the Joint Director of Collegiate Education, Madurai, vide its order in G.O.Ms.No.587, dated 28.10.1998, finally set aside the proceedings of the Director of Collegiate Education, Chennai in No.38456/G2/93 dated 10.04.1997 and remitted the case to the appellate authority, i.e., the Director of Collegiate Education to pursue further action taking into consideration the decision of this Court in W.P.Nos.2993 of 1994, etc., dated 30.08.1995.

14. Thereafter, the Director of Collegiate Education, Chennai, the appellate authority, in his proceedings in Na.Ka.No.4132/G2/98, dated 09.12.1998, has held that the constitution of a College Committee was proper even though there was an ex parte enquiry and therefore, the order of the Joint Director dated 20.04.1993 is not proper and it cannot be accepted. Therefore, based on the disciplinary enquiry constituted by the College Committee, approval was sought by the management, taking note of the charges proved and to grant approval within a period of six weeks in accordance with the provisions of the act. The Director of Collegiate Education finally remanded the matter to the Joint Director of Collegiate Education, Madurai for fresh consideration.

15. The Joint Director of Collegiate Education, in his proceedings in 222/C2/98 dated 19.01.1999, has passed the following order :

"Imposing punishments of severe nature like termination requires very careful examination of facts and other circumstances of the case. In the administration of disciplinary jurisdiction in departmental proceedings, punishment is not, and cannot be, the 'end' in itself. The main purpose of a

punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. In order not to attract the charge of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. When different categories of punishment can be imposed in respect of an alleged fault, one of which is termination removal from service the disciplinary authority perforce is required to consider the act of selecting the most appropriate penalty. Extremely severe penalty of termination/removal cannot be imposed as a routine affair. It cannot be over looked that by and large, it is because the enforcing severe penalty is imposed and total ruination stares one in the eye that the employee concerned is obliged to approach the court and avail of the costly and time-consuming machinery to challenge in dedesegregation the order passed by the disciplinary authority.

Hence, in my opinion the punishment of termination/removal from service will be glaringly excessive. Marginally lenient punishment will be proper. Hence, I do not approve the proposal of termination of the employees.

16. The order of the Joint Director has been communicated to the Director, the appellate authority and the Director has, in turn, communicated the same to the College management. Since the Joint Director has not accorded necessary permission to terminate the delinquent employees, the Director of Collegiate Education, Chennai, in his proceedings in Rc.No.4132/C2/98 dated 21.01.1999, has ordered reinstatement of the suspended employees, M.Narayanasamy and M.Devarajan immediately.

17. Taking note of the order of reinstatement of the delinquent employees, M.Narayanasamy and M.Devarajan passed by the Director in Rc.No.4132/G2/98 dated 21.01.1999, the appeal filed by the Management on 28.01.1999 against the order of reinstatement by the Director, the order of this Court in W.P.No.1972 of 2001, dated 02.02.2001 and on consideration of the facts and the materials on record, the Government by its order in G.O.(2D) No.112 Higher Education, dated 03.07.2001, has directed the delinquent Narayanasamy to remit the balance amount of Rs.1,450/- to the College Management towards sale of old iron rods and pipes

and has ordered reinstatement of Narayanasamy into service from his date of suspension and to treat the period of his suspension as Earned Leave. With regard to the other delinquent Devarajan, the Government has confirmed the order of dismissal from service passed by the College Management for misappropriation of funds.

18. I have considered the various stages of enquiry conducted in respect of the delinquents, Narayanasamy and Devarajan, the findings of the disciplinary authority, appellate authority and the revisional authority and the material evidence available on record. On consideration of the above, it is seen that the Government, in the impugned order, has ordered reinstatement of the delinquent Narayanasamy into service with a direction to pay a sum of Rs.1,450/- due to the Management and has confirmed the dismissal of Devarajan from service. While it is the case of the College Management that both the delinquents have played fraud in money transactions, I am of the considered view that ordering reinstatement of one delinquent with costs and imposing severe punishment of dismissal from service on the other is vitiated by arbitrariness. This Court, of course, has got only limited power to go into the quantum of punishment imposed by the authorities. But, the fact remains clear that the authorities have not given their findings with proper application of mind, since the matter has again and again been remitted from one authority to the other for fresh consideration.

19. As far as the delinquent Narayanasamy is concerned, the impugned proceedings of the Government is in no way legally infirmed and there is no reason to assail as to any arbitrariness or unreasonableness in it. Therefore, looking at any angle, the order passed by the Government reinstating Narayanasamy into service is justified. In fine, the writ petition filed by the College Management in W.P.No.14368 of 2001 challenging the order of reinstatement of the Government is dismissed. Since there is sufficient evidence on record to prove that Narayanasamy has sold the unused iron scraps and pipes belonging to the College Management, there is no other alternative for Naryanasamy except to remit the balance amount of Rs.1,450/- to the College Management towards the sale of unused iron rods and pipes. Consequently, the writ petition in W.P.No.15824 of 2001 filed by Narayanasamy challenging the remittance of Rs.1,450/- to the Management is dismissed.

20. In so far as the delinquent Devarajan is concerned, it is the case of the College Management that he had misappropriated a sum of Rs.10,880/- from their Management and the Government, in its impugned order, has also confirmed his dismissal from service. But, this Court feels that the Government has not analysed the material records in detail to come to the conclusion that Devaraj has misappropriated the said amount and the impugned order confirming the dismissal of Devarajan can only be treated as a non-speaking order. In other words, the Government, while passing the order, has neither gone deep into the material facts nor has considered the legal propositions. In view of the same, the impugned order passed by the Government with regard to the dismissal of Devarajan from service is set aside and the matter is remitted to the Government for fresh consideration and W.P.No.13034 of 2001 is disposed of.

21. In view of disposing of W.P.No.13034 of 2001 in the above terms, the writ petition filed by Devarajan in W.P.No.17460 of 2001 for reinstatement in service with all consequential benefits is also disposed of with a direction to the Government to consider the matter afresh after affording opportunity to the parties concerned.

No costs. Consequently, connected W.P.M.P.Nos.10012 and 10013 of 2005 are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary,
State of Tamil Nadu
Higher Education Department,
Fort St. George,
Chennai 600 009.

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2. The Director of Collegiate Education,
Chennai 600 006.
3. The Joint Director of Collegiate Education,
Madurai 625 001.
4. The Secretary and Director,
Madurai Institute of Social Sciences,
Alagerkoil Road, Madurai 625 002.
5. The Record Keeper, VR Section,
High Court, Madras

+ 1 cc to M/s. Aiyar and Dolia Advocate SR No. 56948

+ 2 ccs to Mr. S. Mani, Advocate SR Nos.56741 & 56740

+ 1 ccs to Government Pleader SR Nos.56527, 56529, 56530 & 56825

PV(CO)
SR/24.9.2007

Common Order in
W.P.Nos.14368, 17460, 13034
and 15824 of 2001



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